

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

KEVIN GARCIA FUERTES,
Defendant

Criminal Docket No. WDQ-10-0770

Baltimore, Maryland
September 10, 2013
2:01 PM to 3:39 PM

**THE ABOVE-ENTITLED MATTER CAME ON FOR
SENTENCING
BEFORE THE HONORABLE WILLIAM D. QUARLES, JR.**

A P P E A R A N C E S

On behalf of the Government:

Michael Cunningham, Assistant U.S. Attorney
Rachel Yasser, Assistant U.S. Attorney

On behalf of the Defendant:

Michael D. Montemarano, Esquire

Also present:

HSI Special Agent Edward Kelly
Johnnie Benningfield, Spanish Interpreter

Reported by:

Martin J. Giordano, RMR, CRR, FOCR
U.S. Courthouse, Room 5515
101 West Lombard Street
Baltimore, Maryland 21201
410-962-4504

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PROCEEDINGS OF SEPTEMBER 10, 2013

THE CLERK: All rise. The United States District Court for the District of Maryland is now in session, The Honorable William D. Quarles, Jr. presiding.

THE COURT: Good afternoon. Please be seated. Before you call the case, Ms. Urban? Ms. Urban? Ellie?

MS. URBAN: Yes.
(Whereupon, a conference was held at the bench off the record.)

THE COURT: Mr. Cunningham?

MR. CUNNINGHAM: Good afternoon, Judge Quarles. I call the case of *United States versus Kevin Garcia Fuertes*, Criminal Docket Number WDQ-10-0770. Michael Cunningham and Rachel Yasser for the United States. With us at counsel table is HSI Special Agent Ed Kelly.

Your Honor, I know the matter is being translated, and perhaps Mr. Benningfield should now be administered an oath.

THE COURT: Please swear the interpreter.
(Oath administered.)

THE CLERK: Please state your name for the record.

THE INTERPRETER: Johnnie Benningfield. Good afternoon.

THE COURT: Good afternoon.

1 Mr. Cunningham, Ms. Yasser, Special Agent Kelly,
2 good afternoon.

3 **MS. YASSER:** Thank you, Your Honor.

4 **MR. MONTEMARANO:** Good afternoon, Your Honor.
5 Michael Montemarano on behalf of the Defendant Kevin Fuertes,
6 who sits next to me at the trial table. We are prepared to go
7 forward, or will be momentarily prepared to go forward.

8 **THE COURT:** Mr. Montemarano, Mr. Fuertes, good
9 afternoon.

10 Counsel, Ms. Urban tells me that you have not
11 actually seen the July 23rd, 2013 copy of the PSR?

12 **MR. CUNNINGHAM:** That appears to be the case, Your
13 Honor.

14 **THE COURT:** Okay. We'll get copies made.

15 **MR. CUNNINGHAM:** Okay.

16 **THE COURT:** We'll take a recess, during which you
17 all can review it.

18 **MR. CUNNINGHAM:** Thank you, Your Honor.

19 **THE COURT:** Thank you. We're in recess.

20 **THE CLERK:** All rise. This Honorable Court stands
21 in recess.

22 (Recess taken, 2:02 p.m. - 2:19 p.m.)

23 **THE CLERK:** All rise. This Honorable Court now
24 resumes in session.

25 **THE COURT:** Good afternoon. Please be seated.

1 Mr. Cunningham, have you read the July 23rd, 2013
2 presentence report?

3 **MR. CUNNINGHAM:** Yes, we have, Your Honor.

4 **THE COURT:** Thank you very much.

5 Mr. Montemarano, have you read the July 23rd, 2013,
6 presentence report?

7 **MR. MONTEMARANO:** Yes, Your Honor.

8 **THE COURT:** Have you had sufficient time to review
9 it with Mr. Fuertes?

10 **MR. MONTEMARANO:** In that the nature of the changes
11 all appear to be relative to guideline calculations, which
12 I'll be challenging in any event, I think the answer should be
13 yes.

14 **THE COURT:** Okay. And have you had the assistance
15 of an interpreter in that process?

16 **MR. MONTEMARANO:** Yes.

17 **THE COURT:** Thank you.

18 Mr. Cunningham, I'll hear you on the guidelines.

19 **MR. CUNNINGHAM:** Your Honor, with respect to the
20 revised calculation that we just reviewed, the Government
21 notes that the guideline calculation as to Count 1, we still
22 disagree with the calculation, and, for reasons --

23 **THE COURT:** Is that because you disagree with the
24 adjustments, or lack of adjustments --

25 **MR. CUNNINGHAM:** Well, it's primarily --

1 **THE COURT:** -- or process?

2 **MR. CUNNINGHAM:** -- the way the units were
3 calculated. Judge, to jump to the bottom line, if you will --

4 **THE COURT:** Which is it ultimately makes no
5 difference?

6 **MR. CUNNINGHAM:** Ultimately, it makes no difference,
7 so I don't know if you want me to express the Government's
8 position with regard to this count, or --

9 **THE COURT:** Yes. I'd like to have everyone
10 thoroughly heard on it, although I do agree with you that
11 ultimately it -- we're doing this largely because the Court of
12 Appeals says the first step in sentencing is the correct
13 calculation of the guidelines.

14 **MR. CUNNINGHAM:** Judge, as we had noted in our
15 submission as to sentencing for Mr. Fuertes, particularly at
16 Paragraph 2, Paragraph 2(c) in particular, we thought that the
17 calculation properly starts at 14. Actually, the Government
18 believed that there were -- the number of units, if you will,
19 to count individuals, the evidence supported more than five
20 individuals, but conservatively, if you increased it by the
21 number of units, you'd be at 19, and then the Government
22 believed that there would be a vulnerable victim enhancement.

23 **THE COURT:** How do you get to the 19 from the 14
24 base?

25 **MR. CUNNINGHAM:** At least five individual victims.

1 **THE COURT:** Each of which does not group.

2 **MR. CUNNINGHAM:** Each of which -- correct, Your
3 Honor. Each of -- which you would not group, so then you
4 get -- the total number of units would be added to the base
5 offense level to put it to 19. The Government believes that
6 there would be a vulnerable victim enhancement.

7 **THE COURT:** Again, I don't know where you got your
8 five from.

9 **MR. CUNNINGHAM:** I'm sorry, Your Honor. I
10 misunderstood. Yeah. From the -- I want to say 4D --

11 **THE REPORTER:** I'm sorry. 4D?

12 **MR. CUNNINGHAM:** Bear with me one second. Under
13 3D1.4, Your Honor, the Government --

14 **THE COURT:** Wait a minute. Let me get there with
15 you. Okay.

16 **MR. CUNNINGHAM:** The Government believes that there
17 would be more than five units, and, therefore, there would be
18 an addition of five levels to the base offense level of 14.
19 So that's where we got to 19.

20 **THE COURT:** Okay. Basically you're saying, then,
21 that there would be this theoretical calculation of individual
22 victims, and that number would exceed five?

23 **MR. CUNNINGHAM:** Yes, sir.

24 **THE COURT:** Okay. And, therefore, that's the
25 addition to the units. Okay.

1 **MR. CUNNINGHAM:** Yes.

2 **THE COURT:** I've got your theory.

3 **MR. CUNNINGHAM:** And then, as I indicated, the
4 vulnerable victim enhancement, the Government, in its
5 submission, believed that the two levels to be appropriate to
6 bring the offense level for Count 1 to 21. As you observed,
7 that's less than what -- more than nine levels less than what
8 we believed the proper calculation is for Count 6, and I
9 believe it's more than nine levels less than even what the
10 Defense contends is the proper calculation for Count 6, thus
11 essentially obviating the impact --

12 **THE COURT:** Okay. I am going to give
13 Mr. Montemarano a chance to be heard obviously on this, but
14 your position with respect to vulnerable victim is that they
15 are illegal immigrants with language difficulties, and
16 accordingly don't have recourse to the police?

17 **MR. CUNNINGHAM:** Essentially, Your Honor, that would
18 be the nature of the vulnerability. Basically the fact that
19 they were isolated from other people while they were
20 performing these services; they had limited facility with the
21 system, with English language; they were essentially without
22 recourse to legal process because of their illegal Immigration
23 status, all of which combined to make them vulnerable victims,
24 correct.

25 **THE COURT:** I understand your theory. I think you

1 probably are right sort of globally. The problem is: Is
2 there sufficient evidence of more than five victims who fit
3 the profile you've just described? We were told at trial that
4 some of the women were, in fact, voluntarily engaged in the
5 business. I'm not sure that we have evidence of five or more
6 than five victims with English-language deficiencies such that
7 they could not communicate to law enforcement. Even
8 Ms. Dueñas, who is the sort of prototypical victim here,
9 probably has -- from my review of the evidence, probably had a
10 fairly sufficient grasp of English to make a cry for help
11 heard.

12 I understand the status point that you're making.
13 My question is: Is there sufficiently-reliable evidence of
14 more than five women who fit the vulnerable victim class given
15 the evidence of some portion of the women working there
16 voluntarily and, in fact, having free travel on their own from
17 New York or other locations there.

18 **MR. CUNNINGHAM:** Judge, I concede that I couldn't
19 tell you -- I could not rattle off right now the names of five
20 women for whom we elicited either testimony from them.
21 Obviously we only called -- we called less than that in terms
22 of the number of women who had worked as prostitutes.

23 **THE COURT:** I'm trying to do it from my notes, and
24 the problem, again, with my notes is that even Ms. Dueñas, the
25 prototypical victim, has sufficient language facility to get

1 aid, and I'm not so sure that -- although I agree with your
2 model, I am not so sure there is sufficient evidence that I
3 can assume that, by virtue of Immigration status and language
4 difficulty, that there is a sufficient number to exceed five,
5 and there probably is.

6 **MR. CUNNINGHAM:** Actually, Judge, as I'm sitting
7 here thinking about the calculus, I'm not sure that, for this
8 particular enhancement -- yeah, I know we're talking about
9 something which, at the end, doesn't necessarily matter, but,
10 for this particular enhancement, I'm not sure that you would
11 have to have multiple vulnerable victims. I'm not sure that
12 every single count or every single unit would have to have the
13 vulnerable victim enhancement.

14 **THE COURT:** Who is the vulnerable victim?

15 **MR. CUNNINGHAM:** Well, I would think, for example,
16 Margarita Santiago, although she, on one hand, testified that
17 she came here following a telephone conversation -- a
18 solicitation actually -- that was the count for which Ventura
19 was convicted of the solicitation.

20 **THE COURT:** She was one of the woman who was found
21 in the house on the raid?

22 **MR. CUNNINGHAM:** She was found in -- during one of
23 the raids on one home. I want to say that was in the
24 September 2009 -- one of the September 2009 raids, but she was
25 definitely encountered. You recall her testimony was that she

1 was from Mexico, and the father of her children had actually
2 essentially compelled her to come to the United States to
3 engage in prostitution here. She was essentially under the
4 influence of his family and him. Much of the proceeds she
5 derived, she returned.

6 Now, I acknowledge that that part of her testimony
7 didn't relate to Mr. Fuertes or Mr. Ventura, except that this
8 operation of brothels within the Hispanic community, the
9 evidence would suggest that there is this network, and, to the
10 extent that the women move from location to location, in some
11 cases substantial distances, not just from, say, New York to
12 Maryland or Maryland to Virginia, but even farther than
13 that -- I can proffer that, you know, we were looking at one
14 woman's calendar, and it had her, you know, one week in Omaha,
15 one week in Florida, fairly significant travel. And more than
16 one person indicated that the way the men who conduct these
17 commercial sexual operations in the Hispanic community operate
18 is there is a loose affiliation.

19 So, despite the fact that some of the women would
20 say, yes, they were voluntarily engaged in this activity, I
21 think, in her argument, Ms. Yasser made a good point of the
22 fact that, you know, voluntary in that context of a woman who
23 is in the United States illegally and whose family members may
24 be hostage of another person in a foreign country at the
25 penalty of returning proceeds from activities she's engaged in

1 the United States, it's a far cry to say it's really engaging
2 in this voluntarily, the fact that their status as illegals.
3 And I'm not disputing what we're saying about their access to
4 the police.

5 **THE COURT:** No, and I'm not disputing the model that
6 you're talking about, that obviously some probable majority of
7 the women are not doing this because, you know, just purely
8 for the economics. I am convinced, and everything I've read
9 from the international trafficking studies tells me that most
10 of the people clearly are victims, and they are isolated and
11 vulnerable. I'm just, again, wondering about the application
12 in this case.

13 Your position, as I understand it, is that there is
14 clearly evidence of at least one vulnerable victim. There is,
15 you believe, evidence of more than five individual victims,
16 whose calculation would be added the vulnerable victim
17 enhancement, and that one is sufficient to --

18 **MR. CUNNINGHAM:** Yes, sir.

19 **THE COURT:** -- bump up all of them?

20 **MR. CUNNINGHAM:** Yes.

21 **THE COURT:** Okay. Thanks.

22 Mr. Montemarano?

23 **MR. MONTEMARANO:** I have a recollection from the
24 trial five months ago that there was clear testimony from
25 several of the women who testified, let alone statements they

1 made to the police, or statements of the women made to the
2 police that they were not maltreated, that they did this
3 voluntarily, that, if they were unhappy, they could vote with
4 their feet, and, beyond that, Your Honor --

5 **THE COURT:** Well, let me ask you, Mr. Montemarano,
6 if you agree with what I understand to be the Government's
7 position, which is that there is evidence of at least one
8 vulnerable victim, and that is sufficient for the bump in each
9 of the at least five victims for which there was evidence.

10 **MR. MONTEMARANO:** There is no evidence that my
11 client knew the victims to be vulnerable, and I think that's
12 an important part of the calculus. The evidence is that these
13 people would travel voluntarily. We have the photographs of
14 the woman in the shirt getting up, getting into the silver
15 minivan, the surveillance photos made by law enforcement. We
16 now have testimony that these women who were traveling
17 willingly from place to place, who are not restrained, who are
18 not subjected to physical violence of any sort.

19 **THE COURT:** Well, your client certainly knew that
20 Ms. Dueñas was under some form of restraint. She couldn't
21 leave the house unless she was accompanied, and essentially
22 for -- either to shop or to engage in prostitution.

23 **MR. MONTEMARANO:** Well, so the Court is clear, our
24 view of the evidence relating to Ms. Dueñas does depart to
25 some degree from that which the Government has.

1 **THE COURT:** I'm not asking you to concede it,
2 Mr. Montemarano.

3 **MR. MONTEMARANO:** But I don't think I even concede
4 the level of knowledge the Government would urge upon the
5 Court, and I say that for the following reason: The
6 Government made no effort to parse physical restraint or
7 physical violence directed towards Ms. Dueñas as a part of a
8 dysfunctional and, in my humble opinion, unacceptable relation
9 between a man and a woman and one relating to the suasion
10 imposed upon her by Mr. Ventura relative to her participation
11 in sex trafficking, interstate prostitution, however you wish
12 to characterize that. That is the basis for the post-trial
13 motion.

14 **THE COURT:** Wasn't there testimony that she was
15 beaten because she wanted to be selective in her choice of
16 clients?

17 **MR. MONTEMARANO:** Well, Your Honor, since you bring
18 it up, let's talk about that. The Government, in its filing
19 of ECF Number 242, states -- and I quote -- the Court's
20 indulgence, please.

21 Your Honor, referring to the fact she was whipped by
22 a belt when she refused to have sex with certain men, the
23 Government refers to this on Page 4 of their filing that I
24 just referenced, and then says further, "Dueñas Franco says
25 that, when she was whipped by the belt by Ventura, Fuertes was

1 present."

2 I'm tired of it, Your Honor. The evidence was clear
3 at trial. The Government's made no effort to clear it up, and
4 now they are, as they did in their closing statement,
5 misstating facts in a rather cold-blooded fashion to persuade
6 this Court to impose a sentence which is not merited upon my
7 client. I invite the Court's attention to the testimony of
8 Ms. Dueñas Franco. On direct, on the 15th of April -- this is
9 ECF Number 2151 appended to my post-trial motion.

10 **THE COURT:** Mr. Montemarano, I don't know if you
11 read my opinion denying the motions, but I acknowledge an
12 inconsistency in her testimony, but go ahead. I'll hear you.

13 **MR. MONTEMARANO:** Thank you, Your Honor. When did
14 the opinion issue?

15 **THE COURT:** It was filed today.

16 **MR. MONTEMARANO:** Been out of the office all day.

17 **THE COURT:** Okay.

18 **MR. MONTEMARANO:** Well, no wonder we're talking
19 about the guidelines and not post-trial motions.

20 Line 15, by Ms. Yasser:

21 "Q. What, if anything, did he beat you with?

22 "A. With his fist and a belt.

23 "Q. Ms. Dueñas, when Chino hit you with his belt did it leave
24 a mark?

25 "A. Yes.

1 "Q. Where was that mark?

2 "A. On the leg.

3 "Q. Which leg?"

4 **THE REPORTER:** A little slower.

5 **MR. MONTEMARANO:** I'm sorry, Mr. Giordano.

6 "Q. And which leg?

7 "A. The left one.

8 "Q. And do you still have that mark?

9 "A. Yes.

10 "Q. Was Flaco present when Chino beat you with a belt?

11 "A. No."

12 I'm sorry. Am I missing something here? Does "no"
13 mean "yes" now? He was not present. There was no indication
14 he was aware of the beating. The Government studiously
15 avoided asking those follow-up questions, and it's their
16 burden; not mine, just so we're clear.

17 **THE COURT:** Okay.

18 **MR. MONTEMARANO:** So, so we're clear, Your Honor --
19 I hate to get exercised over this, but, again, it's what I do.
20 Our view is that there is not adequate evidence relative to
21 that. I'm sure the Court will illuminate me, or I will be
22 illuminated by the Court when I read Your Honor's opinion
23 later today, Your Honor having ruled on the motions, believing
24 there is nothing more you need to hear from counsel, and
25 that's fine.

1 But the notion that Ms. Dueñas was physically --
2 we'll say assaulted as a sort of global concept -- by
3 Mr. Ventura is separate and apart from her being physically
4 assaulted relative to the issue of sex with other men, sex
5 trafficking, or anything else. My respect -- my humble
6 opinion -- and I've been -- being a guy for a few years, this
7 is now about not how a man treats a woman -- we won't even get
8 to gentleman -- and I don't find it especially comforting to
9 make the argument that he's simply a thug; however, that is
10 far different from his having done it relative to his business
11 life as opposed to his personal life, and the evidence at
12 trial simply does not admit it was a distinction --

13 **THE REPORTER:** Does not?

14 **MR. MONTEMARANO:** A distinction focussed upon his
15 business dealings with her.

16 He was not a very nice guy, mistreated her on a
17 regular basis. Perhaps in another context, she would have or
18 could have voted with her feet, but I respectfully submit that
19 there is not evidence tying that violence to the business
20 enterprise he was operating under § 1591, and there is
21 certainly no indication of it being tied to the point where
22 this individual sitting next to me could or should have known,
23 and there is no evidence of his conscious avoidance of that
24 information, and we respectfully submit, therefore, that
25 spreading the net that broadly simply is to warp law beyond

1 all recognition.

2 **THE COURT:** Thank you. Any other guidelines
3 objections?

4 **MR. MONTEMARANO:** Well, I do have one relative to
5 Count 6, but, as to Count 1, no. Again, I've just encountered
6 these enhancements on Count 1, which were not in the earlier
7 PSR. The same -- there is another increase imposed in this
8 most recent PSR. For the record, so we're clear, we're
9 talking Page 11, Paragraph 65, manager or supervisor, criminal
10 activity involving five or more participants.

11 **THE COURT:** Yes.

12 **MR. MONTEMARANO:** That's a legal impossibility, most
13 respectfully, Your Honor.

14 **THE COURT:** A legal impossibility?

15 **MR. MONTEMARANO:** The charge in Count 6 is -- the
16 Court's indulgence -- that the Defendants, during a set period
17 of time, knowingly and in and affecting interstate commerce,
18 recruit, harbor, et cetera, a person and did benefit by
19 receiving anything of value from that venture knowing that
20 force, fraud, and coercion would be used on that person to
21 engage in a commercial sex act. It's a single-victim offense,
22 Your Honor.

23 **THE COURT:** I assume that, at some point, the words
24 "relevant conduct" would spring to someone's mind -- all
25 relevant conduct?

1 **MR. MONTEMARANO:** No other conduct is relevant to
2 this. If this was done with regard to other people, that's
3 not relevant to this. The only thing that's relevant is were
4 other people involved in imposing this upon Ms. Dueñas, women
5 who were not charged, if there were five people supervising,
6 abusing, whatever, her, but the crime is the abuse of her and
7 not of other people in a similar fashion, but that's not
8 charged, and there was no evidence of that with regard to
9 other people. That other people may have been prostituted
10 voluntarily or not -- and we had that discussion already --
11 this crime is separate and apart from the interstate
12 transportation offense.

13 **THE COURT:** I understand the distinction you're
14 making.

15 **MR. MONTEMARANO:** Thank you, Your Honor.

16 **THE COURT:** Ms. Urban, would you come up, please?

17 (Whereupon, a conference was held at the bench off
18 the record.)

19 **THE COURT:** Again, believing, as I indicated to the
20 Government, that, although I do believe the construct of the
21 virtual slavery of these participants is real, it purely is a
22 matter of evidence, and, so that we're not completely marrying
23 conjecture, I am going to not adjust the offense level on the
24 individual victim crimes for the presence of vulnerable
25 victims. I am going to adjust, as the -- I am going to accept

1 basically the calculations of the presentence report,
2 including the Offense Level 37, which includes the adjustment
3 for -- the managerial, supervisory adjustment. Accordingly,
4 the driving guideline range will be determined by the range
5 formed by Offense Level 37, Criminal History Category II.

6 Yes, sir?

7 **MR. MONTEMARANO:** Your Honor, for the record -- I
8 don't wish to be difficult or any more difficult than usual;
9 however, for the record, I'd like it to be noted that I object
10 most strenuously to that adjustment, not just in a general
11 sense because it is my job, but in as much as, in the seven
12 weeks since the adjustment was imposed by USPO, we've not had
13 a chance to brief it or address it in a comprehensive fashion.

14 I don't know that it would have necessarily made a
15 difference. That's not my problem with it. It's simply that
16 I want the record to be clear, and it would have been in
17 that -- during that seven weeks the Court could have
18 anticipated some sort of filing from me. There is nothing in
19 the record, so I want it to be clear that we're all fussing
20 over that.

21 **THE COURT:** Do you want a continuance for that
22 purpose?

23 **MR. MONTEMARANO:** I don't think so, Your Honor. I
24 just -- I think the record is clear that this matter is going
25 to Richmond at some point anyway, so --

1 **THE COURT:** Okay.

2 **MR. MONTEMARANO:** Thank you, Your Honor.

3 **THE COURT:** Yes, sir? Mr. Cunningham, I'll hear you
4 on sentencing.

5 **MR. CUNNINGHAM:** Your Honor, just for the record, I
6 would note that the Government had included in its July 15th
7 submission a recommendation for the inclusion of that
8 enhancement. I acknowledge what Mr. Montemarano is saying in
9 terms of his knowledge.

10 Your Honor, before we speak, I note that
11 Mr. Montemarano had subpoenaed an individual he intended to
12 call as a witness.

13 **THE COURT:** Do you want to hear the witness first?

14 **MR. CUNNINGHAM:** I would prefer to do that, Your
15 Honor, and, if I could, just for the Court's benefit, not
16 necessarily for the record, but I would note that, in addition
17 to some of the other people who are present, the witness you
18 will hear from, the family members of Humberto -- I apologize,
19 Your Honor, because I want to make sure that I get his name
20 properly -- Ricardo Humberto Rivas Ramirez are present in the
21 courtroom.

22 **THE COURT:** This is the Annapolis homicide victim?

23 **MR. CUNNINGHAM:** That's correct, Your Honor. They
24 will not be making or requesting to make any presentation to
25 the Court, but they're present, as is Juror Number 1.

1 **THE COURT:** Okay. I welcome Mr. Rivas' family
2 members here, and I also welcome the return of Juror Number 1.
3 Mr. Montemarano?

4 **MR. MONTEMARANO:** Thank you, Your Honor. The
5 Defense would call Nancy Marin-Ayala, please.

6 You may have a seat right here.

7 **THE CLERK:** Judge, do you want her sworn?

8 **THE COURT:** This witness needs the assistance of an
9 interpreter, Mr. Montemarano?

10 **MR. MONTEMARANO:** Yes, Your Honor.

11 **THE COURT:** Yes.

12 **THE CLERK:** Please raise your right hand.

13 **NANCY MARIN-AYALA**

14 **WAS THEN DULY SWORN TO TELL THE TRUTH**

15 **THE CLERK:** Please be seated. Please state your
16 full name for the record.

17 **THE WITNESS:** Nancy Marin-Ayala.

18 **THE COURT:** Good afternoon, Ms. Ayala.

19 **THE WITNESS:** Good afternoon.

20 **DIRECT EXAMINATION**

21 **BY MR. MONTEMARANO:**

22 Q. Good afternoon, Ms. Ayala. How are you?

23 A. Very well, thank you.

24 Q. Thank you for coming here today.

25 A. You're welcome.

1 Q. I have just a few questions for you.

2 A. Yes, that's fine.

3 Q. It would be correct to say this is not your first trip to
4 the state of Maryland; is that correct?

5 A. It is not.

6 Q. You have been here previously?

7 A. Here?

8 Q. In Maryland.

9 A. In Maryland? Yes.

10 Q. In what year, if you recall?

11 A. In what year? In 2008.

12 Q. And, in 2008, in what city of Maryland did you visit
13 during the month of September?

14 A. During the month of September, Annapolis.

15 Q. Do you recall certain events taking place on or about the
16 23rd of that month?

17 **THE COURT:** Are you talking about the 13th?

18 **MR. MONTEMARANO:** I'm sorry? The 13th.

19 Mr. Cunningham was trying to clue me in.

20 **THE WITNESS:** The 23rd? No. No.

21 **BY MR. MONTEMARANO:**

22 Q. The 13th. I'm sorry.

23 A. Yes.

24 Q. Was that the night that you were shot?

25 A. Yes.

1 Q. Where were you shot, and where were you located when you
2 were shot?

3 A. Inside. Inside the car.

4 Q. And whose car was it?

5 A. Well, I don't remember what his name was. I would call
6 him Pelon, because he was bald.

7 Q. Okay. Now, the person who shot you, where was that
8 person located when he or she did it?

9 A. In the back seat.

10 Q. Okay. Did you see that person enter that vehicle?

11 A. See that person? No, because first I got into the car,
12 and --

13 **THE INTERPRETER:** And the interpreter needs to
14 inquire regarding first or second person. If I may.

15 **MR. MONTEMARANO:** Let me withdraw and let me start
16 over.

17 **BY MR. MONTEMARANO:**

18 Q. Would you recognize the person that shot you if you
19 encountered that person face to face?

20 A. Yes.

21 Q. I ask you to look at the gentleman here in the maroon or
22 dark red jumpsuit with the headphones on sitting at the table,
23 noting for the record Defendant Kevin Fuertes. Is this the
24 person who shot you?

25 A. No.

1 **MR. MONTEMARANO:** Pass the witness, Your Honor.

2 Thank you.

3 **THE COURT:** Thank you.

4 Cross?

5 **CROSS-EXAMINATION**

6 **BY MR. CUNNINGHAM:**

7 Q. Ms. Marin-Ayala, you acknowledge that the event when you
8 were shot occurred approximately five years ago from today,
9 right?

10 A. Yes.

11 Q. And the person who shot you was also the person that shot
12 and killed Pelon, right?

13 A. Yes.

14 Q. And you said you were in the car when the person who shot
15 you and Pelon got into the car, right?

16 A. I got into the car, and then Pelon got into the car, and
17 then, last, the guy that shot Pelon got into the car.

18 Q. And, to be clear, this was a little bit after midnight of
19 that day, correct?

20 A. Yes.

21 Q. And it was dark out, right?

22 A. Yes.

23 Q. And the car was dark, right?

24 A. Yes.

25 Q. You had not seen the person who shot Pelon before you got

1 in the car, had you?

2 A. No.

3 Q. And you were seated in the front passenger seat of
4 Pelon's car, right?

5 A. Yes.

6 Q. And, to be clear, you believe that the car was Pelon's
7 car, right?

8 A. Well, I think so, but, honestly, I never knew for real
9 whose car that was or anything.

10 Q. And, in fact, when you were seated in the front passenger
11 seat, Pelon got in the car, and then the shooter got in the
12 car, you were actually on the telephone, right?

13 A. Yes.

14 Q. And you were talking to another person who was a friend
15 of yours, right?

16 A. Yes.

17 Q. And you heard an exchange between the guy who was in the
18 seat behind you and Pelon, right?

19 A. Yes, but what I don't recall clearly was what they were
20 arguing about.

21 Q. Because you were actually still engaged in the
22 conversation on the telephone, right?

23 A. I don't recall. There were many things at that moment
24 that I have forgotten.

25 Q. Ms. Marin-Ayala, I'm going to show you now what I've

1 marked as Government Sentencing Exhibit Number 1, and this is
2 a photograph taken of the interior of Pelon's car from the
3 right rear door perspective, and I'm going to point now to
4 the -- if I may, I'm just going to point to the seat that
5 essentially is in the upper middle of this photograph. That's
6 the seat that you were seated in, correct?

7 A. Yes.

8 Q. And, Ms. Marin-Ayala, how tall are you?

9 A. I wouldn't know how to tell you. I believe I am one
10 meter, 56 centimeters tall.

11 Q. Okay. Thank you.

12 And, when the individual got in the car -- into the
13 seat behind you, you were on the telephone. You did not turn
14 around and look at that individual, did you?

15 A. No.

16 Q. You did note that, at one point in time, the individual
17 had a baseball hat on, right?

18 A. Well, he did have a cap. I don't know if it was a
19 baseball cap, but it was a cap.

20 Q. Okay. And you've indicated that you were shot. You were
21 actually seriously injured in the events of September 13th,
22 2008, right?

23 A. Yes.

24 Q. And, as a result of that, you spent several weeks in the
25 hospital, correct?

1 A. Yes.

2 Q. And you recall having been interviewed several times by
3 police officers from Annapolis regarding the shooting?

4 A. No. I just recall that, when that happened, they were
5 pulling me out of the car. They put me in the car of the lady
6 officer, and she was telling me, "Don't go to sleep."

7 Q. I'm sorry. My question wasn't very clear. After the
8 event and following, the several weeks following this
9 shooting, do you remember that police officers spoke to you
10 about the incident several times?

11 A. Yes.

12 Q. And do you remember them asking for your help in trying
13 to identify who it was that shot you and shot Pelon?

14 A. Yes.

15 Q. And do you remember telling the police officers that you
16 didn't think you could identify who it was that had done the
17 shooting?

18 A. Yes. I was referring to the face, but, I mean, I --
19 all's I could talk about is maybe about the body. What I
20 recall was his body was slender, and I think he was about 68
21 tall. I remember that he was -- he was skinny, and this guy
22 you're pointing out to me, he's like -- he's like kind of
23 full. I mean, he's kind of fat.

24 Q. And you don't obviously know whether, in the five years
25 since the shooting, this man has gained weight, do you?

1 A. I don't think so.

2 Q. Well, you don't know that he's gained weight or not, do
3 you?

4 A. No. How can I explain it to you. I wouldn't know how to
5 tell you. Maybe he has put on some pounds.

6 Q. When you were asked by the police to assist in
7 identifying the person who shot you and Pelon, you gave some
8 indication as to what nationality you thought he was, didn't
9 you?

10 A. I don't recall clearly, but --

11 Q. You don't remember telling them you thought maybe he was
12 from Honduras?

13 A. In other words, yes. I recall how the guy spoke. I just
14 don't recall if the police asked me that question.

15 Q. And I gather that you're able to make distinctions in how
16 someone who is speaking Spanish maybe changes or accent or
17 inflection might reflect where they're from?

18 A. Yes.

19 Q. And, for example, I believe you're from Mexico; is that
20 right?

21 A. Yes.

22 Q. And, someone from Mexico, the Spanish that someone from
23 Mexico speaks might be somewhat different from the way someone
24 from Honduras would speak and pronounce things; is that right?

25 A. Yes.

1 Q. You used the word Flaco earlier in answering a question,
2 I believe, about sort of the description and the individual.
3 What does the word Flaco mean as you were using it?

4 A. Well, slender. Slender. In other words, not fat.

5 Q. Ms. Marin-Ayala, do you know an individual -- actually,
6 his last name is Ventura, but he was known to people as Chaco
7 or Chile, or Chino. Do you know that individual?

8 A. No.

9 Q. I'm going to show you what I've marked as Government
10 Sentencing Exhibit Number 2. Do you recognize this
11 individual?

12 A. I don't remember.

13 Q. I'll take it. Thank you.

14 Ms. Marin-Ayala -- and I ask this. I'm not -- I
15 don't want to embarrass you, but, when you were with Pelon the
16 evening that he was shot and you were shot, you had been
17 engaged in prostitution that night; is that right?

18 A. Yes.

19 Q. And do you recall having spoken to -- well, at the time
20 you were in Annapolis, you were not a permanent resident of
21 Annapolis; is that right?

22 A. What do you mean?

23 Q. Well, did you live somewhere other than in Maryland in
24 September of 2008?

25 A. Yes.

1 Q. And had you traveled to Maryland essentially to engage in
2 prostitution in Annapolis?

3 A. What do you mean?

4 Q. Well, you were obviously in Maryland on September 13th of
5 2008, the night you were shot, and you had been engaged in
6 prostitution prior to when you were shot; is that correct?

7 A. Yes.

8 Q. And had you spoken to Pelon about coming here and
9 essentially working with him to engage in prostitution?

10 A. I didn't speak with him. I spoke with his wife.

11 Q. Do you remember speaking with anyone else who was engaged
12 in prostitution -- any other man who was engaged in
13 prostitution activities here in Maryland prior to coming to or
14 speaking to Pelon's wife?

15 A. No.

16 Q. Ms. Marin-Ayala, did you have a mobile or a cellular
17 telephone that you used in the September 2008 time period?

18 A. Yes.

19 **MR. CUNNINGHAM:** May I have one moment, Your Honor?

20 **THE COURT:** Yes.

21 **MR. CUNNINGHAM:** I have nothing further, Your Honor.
22 Thank you.

23 **THE COURT:** Redirect?

24 **MR. MONTEMARANO:** Very briefly, Your Honor. The
25 Court's indulgence.

1 If I could ask my investigator, Robert Versis, to
2 join me here in the well of the Court. He has done most of
3 the interpreting in my discussions with Ms. Ayala, and I want
4 to make sure I don't misstate things. Thank you.

5 **REDIRECT EXAMINATION**

6 **BY MR. MONTEMARANO:**

7 Q. Ms. Marin-Ayala, was there a house that Pelon was using
8 for his prostitution activities?

9 A. A house? No.

10 Q. A building of some sort?

11 A. It was that we would go to people's houses. It wasn't
12 that we had a house --

13 Q. Okay.

14 A. -- as far as I knew.

15 Q. And did there come a time that evening, the night that
16 you were shot, when you first saw the person who shot you?

17 A. No.

18 Q. When you first saw him, where was he in relation to any
19 houses used for prostitution by Pelon?

20 A. Like some -- like quite some distance away from us.

21 First of all, I was like two meters away from the car when I
22 first went -- when I was in the car.

23 Q. Was he with other people?

24 A. Well, there in the car, it was just him and me, and then
25 he was the guy that got in, but there in the house where --

1 close to where we were at, there were like five or six guys
2 there talking.

3 Q. So did you see him before he entered the car?

4 A. Yes.

5 Q. And, when you look at this individual, are you sure that
6 he's not the one who shot you?

7 A. Yes.

8 Q. And Mr. Cunningham asked you about if the police had
9 asked you for your help. Do you recall that question?

10 A. Yes. Well, I don't recall real well, but yes. Yes.
11 This was after I got out of the hospital, because --

12 Q. Have the police spoken to you since you got out of the
13 hospital five years ago?

14 A. No.

15 Q. Did the police show you photographs when he spoke to you
16 in the hospital?

17 **THE INTERPRETER:** May the interpreter ask you to
18 repeat? While you were at the hospital?

19 **MR. MONTEMARANO:** While you were in the hospital?

20 **THE WITNESS:** I don't recall.

21 **MR. MONTEMARANO:** No further questions, Your Honor.

22 **THE COURT:** Recross?

23 **MR. CUNNINGHAM:** Your Honor, may I just have one
24 recross?
25

RECROSS-EXAMINATION**BY MR. CUNNINGHAM:**

Q. Ms. Marin-Ayala, am I correct in understanding that your testimony that this is not the man that did the shooting is based not on his face, but on his body -- the shape of his body?

A. Well, let me ask a question, because I have a doubt. I'm sure that it's not him, but how long afterwards did you catch him to be sure that it wasn't him in the accident? In other words, it's not him. He was really skinny.

Q. Ms. Ayala, I can't respond to questions from you.

A. Okay.

Q. Your testimony is it was not this man, because the shooter was skinny; is that right?

MR. MONTEMARANO: Asked and answered.

THE COURT: Overruled.

THE WITNESS: Yes.

MR. CUNNINGHAM: Nothing further, Your Honor.

THE COURT: Thank you.

FURTHER REDIRECT EXAMINATION**BY MR. MONTEMARANO:**

Q. Would you recognize the man who shot you if you encountered him face to face?

THE COURT: Re, re, redirect?

MR. MONTEMARANO: I'm sorry, Your Honor. Yes or no?

1 **THE WITNESS:** No.

2 **MR. MONTEMARANO:** No further questions, Your Honor.

3 **THE COURT:** Re, recross?

4 **MR. CUNNINGHAM:** No, Your Honor.

5 **THE COURT:** Thank you.

6 **MR. MONTEMARANO:** If I could have a moment with the
7 witness and excuse her.

8 **THE COURT:** Yes. You may step down, ma'am. Thank
9 you.

10 **MR. MONTEMARANO:** Thank you.

11 (Witness excused.)

12 **MR. MONTEMARANO:** Thank you, Your Honor.

13 **THE COURT:** Any other evidence?

14 **MR. MONTEMARANO:** No other witnesses.

15 **THE COURT:** Good. I will then hear from the
16 Government in sentencing allocution.

17 **MR. CUNNINGHAM:** I'm sorry, Your Honor. If I may
18 have just one moment?

19 **THE COURT:** Yes.

20 **MR. CUNNINGHAM:** Your Honor, the United States
21 submitted a sentencing memorandum, in which I had made the
22 Government's recommendation for a sentence that we believe was
23 appropriate within the guideline range. Without -- and I
24 don't want to sound cavalier about this in the least. The
25 Government acknowledges that we introduced evidence regarding

1 Mr. Rivas Ramirez' homicide, and -- or murder. This was -- no
2 doubt, this was a brutal murder.

3 We did not make an effort in the trial and, to a
4 certain extent, we don't want to distract or detract from the
5 appropriate focus in this context of the sentence for
6 Mr. Fuertes by suggesting that the -- Pelon's murder is not
7 relevant to the consideration. Indeed, we said that is
8 something that factors into your consideration under § 3553.
9 We're not calling it relevant conduct. We did not seek some
10 sort of guideline enhancement for that basis, and, indeed, the
11 conundrum for the Government would really be, if we, the
12 Government, felt like we had substantiated a case for that
13 murder, in this context, it would be impossible for us to
14 suggest that anything less than a life sentence would be
15 appropriate. That was a brutal murder of a man.

16 Having said that, Your Honor, while I don't think
17 that Ms. Marin-Ayala's testimony was of no utility to the
18 Court, I think that, at best, there is certainly evidence that
19 she's not real clear about the events. She conceded that
20 there is confusion, that the passage of time as well as the
21 trauma of the incident and the immediate circumstances -- the
22 darkness, the nature of the vehicle -- and I should have
23 handed up to Your Honor what I marked as Government Exhibit 1,
24 which I have shown to the Defense, but --

25 (Document tendered to the Court.)

1 **THE COURT:** Thank you.

2 **MR. CUNNINGHAM:** -- as Your Honor had an opportunity
3 to see Ms. Marin-Ayala -- and you can look at the vehicle, and
4 she acknowledged she didn't turn around in the car. She was
5 on the telephone. I think there are certainly sufficient
6 indicia there to question the fact that she said that
7 Mr. Fuertes is not the man who did the shooting.

8 The Government's recommendation, Your Honor, as to
9 the appropriateness of a guidelines sentence, which is, in
10 fact, several years more than the mandatory minimum of 15
11 years, is predicated on the nature of Mr. Fuertes' criminal
12 conduct and his criminal history.

13 I heard Your Honor speak on a number of occasions,
14 particularly in the context of illegal reentry cases, as to
15 your understanding as to why people from other countries will
16 do anything to try to come to the United States, and it's
17 understandable. Many of them, when they come to the United
18 States, for the most part, are law-abiding, productive
19 citizens, and typically it may only be under some unusual or
20 unfortunate circumstance that they might even come to the
21 attention of authorities, and I think the facts and figures
22 would suggest that a substantial number of people who are in
23 the United States illegally are leading relatively law-
24 abiding, productive lives in this country. But there are
25 some, like Mr. Fuertes, who do anything but engage in

1 law-abiding conduct.

2 On the contrary, Mr. Fuertes lived basically as a
3 parasite on -- by virtue of his participation in this
4 exploitive crime that essentially used women, typically
5 Hispanic women, many if not most of whom were in the United
6 States likewise illegally. I believe -- I recall there was
7 one woman who was a prostitute who had to -- actually herself
8 had achieved a naturalization, but, for the most part, the
9 women were themselves illegal aliens, and they were moved
10 around like chattel from one location to another, typically
11 for a week at a time.

12 As Ms. Yasser -- and I refer to it because she said
13 it then, and I can't say it as eloquently -- the conditions
14 under which these women were made to work, made to engage in
15 sex acts with strange men, as many as, you know, 50 to 100
16 times a week, sometimes, you know, a good day -- a productive
17 day, as many as 30 times a day on a dirty, dingy mattress in a
18 room with little other than the mattress, maybe a bed stand
19 and the accoutrements of the trade, with a bare minimum amount
20 of clothing, the same kind of lousy, you know, fast food that
21 they might get on a day-in/day-out basis, and virtually no
22 distraction from that life-style.

23 That's how Mr. Fuertes lived in the United States.
24 When he did come to the attention of law enforcement
25 authorities, as it might relate to his potential

1 deportation -- you'll recall it was in the March 2009 time
2 frame. Special Agent Kelly indicated that he was essentially
3 put into proceedings. There were certain impositions imposed
4 on him as far as traveling and restrictions. He went to a
5 different location. If you'll recall the testimony, that's
6 when, with Ms. Rebecca Dueñas Franco, they moved their
7 operation from the Annapolis area temporarily up to the
8 northern part of Anne Arundel County, southern Baltimore, and
9 operated up there.

10 Mr. Fuertes dropped off the radar scope for the
11 deportation purposes, and ultimately he relocated to Virginia,
12 not to change his life-style, but to continue to engage not
13 only in this kind of criminal conduct in Virginia, but he got
14 involved in another criminal enterprise for which he was
15 caught, convicted down there, and served a term of
16 incarceration.

17 So, to the extent that there was some suggestion in
18 the Defense sentencing memorandum that there is not a need to
19 be concerned about his future criminal conduct, I take strong
20 exception to that. I think that there is no indication other
21 than to believe that Mr. Fuertes is a recidivist and that his
22 criminal propensities are essentially all that he has to get
23 by on.

24 The nature of the crime in Count 6 is the extreme
25 form of the kind of exploitive criminal conduct that we call

1 commercial sex or prostitution, where an individual, through
2 the force, fraud, coercion, and intimidation, those kinds of
3 influences, is compelled to engage in that behavior, a very
4 dehumanizing, debasing kind of conduct, that clearly warrants
5 the severe punishment that the Government recommends in this
6 case. While indeed specific deterrence may not be an
7 immediate concern in this case, certainly incapacitation is
8 one factor, and I would submit, Your Honor, that a more
9 general deterrent concern is relevant and appropriate to your
10 decision as to the least amount of sentence that is necessary
11 to achieve the ends of justice.

12 Your Honor, unless you have any specific questions,
13 I'll submit.

14 **THE COURT:** Thank you, Mr. Cunningham.

15 **MR. CUNNINGHAM:** Thank you, Your Honor.

16 **THE COURT:** Mr. Montemarano?

17 **MR. MONTEMARANO:** First off, as the child of
18 immigrants on both sides of the family, it would be at least
19 unseemly for me to suggest that Mr. Fuertes has in any way,
20 shape, or form taken advantage of what this country offers,
21 and my grandmother on my father's side and my mother, both of
22 whom were born on the other side of the water, would look down
23 from where they are today unfavorably if I did so. So I'm not
24 about to carry water for Mr. Fuertes, but I think the
25 Government goes far too far, especially in light of the

1 limited nature of the evidence they were able to adduce
2 regarding my client.

3 With regard to Count 1, we conceded his
4 participation in interstate transportation of women for
5 purposes of prostitution. There was no question the evidence
6 made that out. We didn't argue differently during the trial.
7 That's not what drives our sentencing calculus today.

8 What does is Count 6, the sex trafficking offense,
9 and that is an offense alleged as to one person; the coercion,
10 enticement, and abuse of one person, and a person who, when
11 she had the chance to hang my client and had a chance to hang
12 my client without any likelihood of being contravened
13 effectively, she was, after all, there along with him, and we
14 weren't, and I would have no means by which to discredit her,
15 a rather vulnerable and sympathetic witness. The Court was
16 clearly moved by her testimony and by what she had undergone
17 at the hands of Mr. Ventura, and, given that opportunity to
18 hang him out to dry, she did nothing of the kind.

19 As we lay out in our sentencing memorandum, in our
20 post-trial motions, her relationship with him was good. He
21 never struck her. He never abused her. He never restrained
22 her. She had no complaints about him, *per se*, but clearly he
23 was acting, to the extent he did act, at the behest of
24 Mr. Ventura as a part of the sex -- as a part of the
25 interstate transportation, but we respectfully submit, as we

1 have -- and I look forward to reading Your Honor's opinion to
2 the contrary -- it is relating to the sex trafficking where we
3 respectfully diverge with the Government and with apparently
4 the Court, in that there simply is no evidence that he
5 deliberately chose to close his eyes to the abuse of this
6 woman, that he participated in the abuse of this woman, the
7 coercion of this woman, the enticement, anything relating to
8 that.

9 When the vast fund of evidence in this case
10 referenced people who willingly participate in this and are
11 treated well enough to continue to do it and are treated well
12 enough to return to work for Mr. Ventura yet again and to work
13 for Mr. Ventura in other places and to be referred by
14 Mr. Ventura to other people and to bring in their friends and
15 associates, perhaps even relatives -- we've never gotten that
16 clear -- I submit that the statutory mandatory minimum, which
17 we find objectionable but have no means by which to challenge,
18 is more than necessary and certainly sufficient to achieve the
19 purposes under § 3553(a), which must guide this Court in
20 imposing sentence. And, indeed, the only thing that gets us
21 from the mandatory minimum, a guideline range subsuming that
22 in Criminal History Category II, and the 20 years called for
23 at the bottom of the guideline range at Level 37 is indeed the
24 enhancement for role.

25 To suggest that my client was a manager because he

1 did no more than collect money and obtain food for the girls,
2 without being able to control them in any way, shape, or
3 form -- there was not a single instance alluded to by any of
4 these women where he directed them, he told them what to do,
5 he said, "If you leave, I will call Ventura." Nothing of that
6 sort. No form of suasion. He was simply there, as much as
7 anything else, a bouncer, to ensure that the men who were the
8 customers did not become unruly and acted appropriately.
9 There was no suggestion that he took directions from
10 Mr. Ventura to create in them some measure of fear or concern
11 for their well-being if they did not act in accordance with
12 Mr. Ventura's directives. There simply is nothing of that
13 nature to sustain, we submit, even the conviction.

14 However, to the extent the jury has spoken and the
15 Court does not choose to overturn the jury's verdict, that
16 same analysis must be applied to the sentencing in this
17 matter, and, when we see a 15-year mandatory minimum, far in
18 excess of that imposed upon individuals who undertake crimes
19 of violence, and when it is understood that the jury was given
20 more than adequate evidence, it seems to me, upon which to
21 convict Mr. Fuertes and chose not to -- and I speak, of
22 course, at the change in the law of December 23rd, 2008 when
23 the law became effective, and then the reckless disregard
24 standard became a means by which the Government could seek a
25 conviction.

1 There was plenty of evidence of misconduct, his
2 taking her to the police, or giving a false statement,
3 et cetera, or escorting her to the police. The jury chose not
4 to convict based upon that. There is no question the only
5 reason they were able to convict was some form of reckless
6 disregard standard, as we've argued in our papers. And, if
7 that's the most he did, how can it be that 15 years is not
8 enough? I just don't see it, Your Honor.

9 If what he did was to stand idly by, to turn a blind
10 eye to this conduct, then he is looking at the very same
11 mandatory minimum that Mr. Ventura, who, like it or not, was
12 in this matter up to his ears, and, accordingly, I think there
13 must be a degree of differentiation. Section 3553 indeed
14 requires that, when sentence is imposed and when guideline
15 calculations are undertaken on these individuals, except that
16 they're not -- I have not -- of course not seen Mr. Ventura's
17 PSR, but I cannot but imagine that he's in the same boat, 34
18 plus about 4 for role, 3 for role, whatever, he'll be at
19 this -- virtually the same guideline level as Mr. Fuertes, and
20 that is fundamentally the best description that one can
21 provide to this Court of the essentially flawed nature of the
22 guidelines in many instances. This must be one of them.

23 If I can advise my client of his right of
24 allocution?

25 **THE COURT:** Please.

1 **MR. MONTEMARANO:** Kevin, you have the absolute right
2 to address the Court, to say anything that you think needs to
3 be said, or to say nothing. I can tell you that Judge Quarles
4 will not hold it against you if you have nothing to say, for
5 he understands that it is my job to speak on your behalf.
6 However, this is your right to speak or not, and you must
7 either assert it now, or give it up now. Do you understand?

8 **THE DEFENDANT:** There is just one thing I have to
9 say. Be just with me. That's all I ask of you.

10 **THE COURT:** Okay.

11 **MR. MONTEMARANO:** Thank you, Your Honor.

12 **(Conference at the bench.)**

13 **(It is the policy of this Court that every guilty**
14 **plea and sentencing proceeding include a bench**
15 **conference concerning whether the defendant is**
16 **or is not cooperating.)**

17 **THE COURT:** Please remain standing.

18 Mr. Fuertes is 26 years old and has two adult
19 convictions, one for driving without a license in 2008, and
20 one a racketeering conspiracy conviction in 2011. It is a
21 federal conviction involving the production and distribution
22 of false identification documents. He's in Criminal History
23 Category II.

24 On April 22nd of this year, a jury convicted him of
25 engaging in an interstate prostitution conspiracy and sex

1 trafficking by fraud, force, and coercion. His total offense
2 level, through the process explained earlier in this hearing,
3 is 37. His advisory sentencing guidelines range is 235 to 293
4 months.

5 By way of background, Mr. Fuertes was born in
6 Honduras and raised by married parents there, had what he
7 described as a normal and a good childhood. He, in fact,
8 completed sixth grade there. He entered the United States
9 illegally in 2005 or '6 as he recalls. He's a social drinker,
10 has had occasional recreational use of marijuana and cocaine,
11 and has also, in addition to any other illegal activity,
12 worked in construction and as a cashier and cook, and
13 interestingly his work background included at times herding
14 cattle in Honduras. Interesting pursuit.

15 Given the Defendant's relatively high level of
16 involvement in this tawdry enterprise that we spent two weeks
17 exploring at trial, I believe that a substantial sentence is
18 warranted. I think it probable that the Defendant was
19 involved in Mr. Rivas' murder; however, that will be a matter
20 for trial in Anne Arundel County that will resolve that. So,
21 even without that significant consideration, a substantial
22 sentence is warranted.

23 I believe that these are the kinds of offenses which
24 are suitable for treatment within the advisory guidelines, and
25 a bottom-of-the-guidelines sentence for these offenses is

1 sufficient but not greater than necessary to reflect the
2 seriousness of the offenses, provide just punishment and
3 adequate deterrence, promote respect for the law, and protect
4 the public from further crimes of the Defendant, which is
5 always a consideration when a defendant is relatively
6 youthful, as Mr. Fuertes is.

7 Accordingly, Mr. Fuertes, on Count 1, I commit you
8 to the custody of the Attorney General or his authorized
9 designee in the Bureau of Prisons to serve a term of
10 imprisonment of 60 -- that is, 6-0 -- months. On Count 6, I
11 impose a 235-month sentence; that is, 2-3-5. Those sentences,
12 as I indicated, will run concurrently.

13 As to Count 1, I impose a three-year term of
14 supervised release; as to Count 6, a five-year term of
15 supervised release, with the special condition that you
16 cooperate with Immigration & Customs Enforcement authorities
17 and obey any lawful order entered in your cases. I also
18 impose a requirement of drug and alcohol screening and
19 treatment as prescribed by the probation officer. I waive the
20 imposition of fine. On Count 1 and Count 6, I impose \$100
21 special assessments for a total special assessment of \$200.

22 Mr. Fuertes, do you understand the sentence?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** You have 14 days from today's date to
25 file an appeal. If you cannot afford to pay a filing fee, you

1 can appeal without a fee. Do you understand that, sir?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Place of incarceration, Mr. Montemarano?

4 (Counsel conferring with the Defendant.)

5 **THE DEFENDANT:** No.

6 **MR. MONTEMARANO:** He has no family, Your Honor.

7 There is no geographical issue in that sense.

8 **THE COURT:** Okay.

9 **MR. MONTEMARANO:** For the record, sir, I will be
10 filing your appeal in the next couple days.

11 **THE COURT:** Anything further from the Government?

12 **MR. CUNNINGHAM:** No, Your Honor.

13 **THE COURT:** From the Defense?

14 **MR. MONTEMARANO:** No, sir.

15 **THE COURT:** Thank you.

16 Good day, Mr. Fuertes.

17 **MR. MONTEMARANO:** Thank you, Your Honor.

18 **THE CLERK:** All rise. This Honorable Court stands
19 in recess.

20 (Proceedings adjourned.)

21

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1 I, Martin J. Giordano, Registered Merit Reporter and Certified
2 Realtime Reporter, certify that the foregoing is a correct
3 transcript from the record of proceedings in the
4 above-entitled matter.

5
6 _____
7 Martin J. Giordano, RMR, CRR

_____ Date

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